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October 13, 2015

Marnique Heath, Chairperson
Board of Zoning Adjustment
441 4th Street, NW
Suite 210S
Washington, DC 20001

Re: Application No. 19093 – 2708 Sherman Avenue NW (Square 2858, Lot 53)
Prehearing Statement of the Applicant

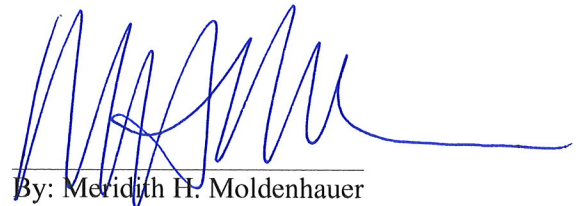
Chairperson Heath and Honorable Members of the Board:

On behalf of Warder, LLC, please find enclosed the Prehearing Statement for the above--referenced application. The application is scheduled to be heard before the Board of Zoning Adjustment on October 27, 2015.

Thank you for your attention to this matter.

Sincerely,

GRIFFIN, MURPHY,
MOLDENHAUER & WIGGINS,
LLP



By: Meredith H. Moldenhauer

Cc: Advisory Neighborhood Commission 1B
c/o James Turner, Chair and SMD 1B09 (via email)
Office of Planning (via email)

**BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

**APPLICATION OF
WARDER, LLC**

**BZA APPLICATION NO. 19093
HEARING DATE: OCTOBER 27, 2015**

PREHEARING STATEMENT OF THE APPLICANT

I. NATURE OF RELIEF SOUGHT

This statement is submitted on behalf of Warder, LLC (the “Applicant”), the owner of property located at 2708 Sherman Avenue NW, Lot 53 in Square 2858 (the “Property”) in support of the application for variance relief, pursuant to 11 DCMR §3103.2, from the requirements regarding open courts (§406)¹; and for special exception relief pursuant to 11 DCMR §3104.1 to permit the conversion of an existing residential building to a three-unit apartment house in the R-4 District.

In response to requests made by the ANC, the Applicant has agreed to construct a front porch similar in size and scale to the existing porch on the adjacent structure, to construct the front façade of the addition in brick and to add windows to the front façade of the addition.

II. EXHIBITS IN SUPPORT OF THE APPLICATION

Exhibit A:	Building Permit Record
Exhibit B:	Baist Map
Exhibit C:	Photographs of Footpath
Exhibit D:	Architectural Plans

III. APPLICANT MEETS BURDEN OF PROOF FOR VARIANCE RELIEF

The Board is authorized to grant an area variance where it finds that the Applicant fulfills the three-prong area variance standard. As described in this Prehearing Statement, and as will be further explained at the public hearing, all three prongs of the area variance test are satisfied.

¹ Relief from the open court requirement of 11 DCMR §406.1 was added after the filing of the initial application.

A. The Property is Unusual Because of its Size, Shape or Topography and is Affected by an Exceptional Situation or Condition.

The phrase “exceptional situation or condition” in the variance test applies not only to the land, but also to the property’s history and the configuration of a building on the land. *See, Clerics of St. Viator, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291, 294 (D.C. 1974). The Property is unusual and affected by an exceptional situation and condition. The Property is landlocked, having no alley access and is improved with a vacant two-story semi-detached dwelling that was constructed in 1922 and does not have a parking space. *See* Permit Record at **Exhibit A**. *See also*, Baist Map at **Exhibit B**. The Property is located at the end of a row of primarily rowhomes. The lot is 120 feet deep but only 25 feet wide. Presently, the Property has a nonconforming side yard. Adjacent to the Property along the south side is an approximately 3-4 foot footpath that runs behind the homes on Fairmont Street NW, *see* Photographs of Footpath at **Exhibit C**.

B. Strict Application of the Zoning Regulations would Result in Practical Difficulty

Strict application of the zoning regulations regarding open court width (§406.1) would result in a practical difficulty to the Applicant.

1. *Open Court Width (§406.1)*

The Applicant proposes to add a rear addition that extends approximately 6’-7” into the nonconforming side yard area. The size and shape of the addition is required for an efficient unit layout and is a result of the Property’s narrow width and existing nonconforming side yard.

The addition extinguishes an existing nonconforming side yard and replaces it with a nonconforming court. Under §406.1 the minimum open court width for an apartment house is 10 feet. The proposed dwelling will have an open court width of 6 feet- 7 ½ inches; 3 feet 4 ½ inches short of the requirement. Though the Property will have an open court a few inches short of the requirement, the effective open court width will comply with the Zoning Regulations as a result of the well-established

foot path that runs along the south side of the Property line. Consequently, the footpath results in an open court that effectively and visually complies with the Zoning Regulations, even though the Applicant requests minor relief from the open court requirement. The narrow width of the Property and the non-conforming side yard results in practical difficulties for the Applicant in providing an efficient unit layout without the requested variance relief.

C. No Substantial Detriment to Public Good or Inconsistency with Zone Plan

There will be no substantial detriment to the public good and no substantial impairment to the intent, purpose, and integrity of the zone plan by approving the requested variance relief. The requested relief is minor. Moreover, due to the existing footpath that is adjacent to the Property, the intent of the Zoning Regulations to provide 10-foot wide open courts is substantially and visually complied with.

IV. APPLICANT COMPLIES WITH GENERAL SPECIAL EXCEPTION CRITERIA

The Board is authorized to grant a special exception where it finds:

- 1) The proposed use is in harmony with the general purpose and intent of the Zoning Regulations and Zone Maps; and
- 2) the proposed use is not likely to adversely affect the use of neighboring property, subject to the conditions specified in the Zoning Regulations for the particular special exception use. 11 DCMR §3104.1.

For a special exception for a conversion to an apartment house in the R-4, the BZA must also find the following:

336.2 The maximum height of the residential building and any additions thereto shall not exceed thirty-five feet (35 ft.), except that the Board of Zoning Adjustment may grant a special exception from this limit under § 3104, subject to §§ 336.3 through 336.11.

336.3 The fourth (4th) dwelling unit and every additional even number dwelling unit thereafter shall be subject to the requirements of Chapter 26, Inclusionary Zoning, including the set aside requirement set forth at § 2603.9.

336.4 There must be an existing residential building on the property at the time of filing an application for a building permit.

336.5 There shall be a minimum of nine hundred square feet (900 sq. ft.) of land area per dwelling unit.

336.6 Any addition, including a roof structure or penthouse, shall not block or impede the functioning of a chimney or other external vent on an adjacent property required by any municipal code.

336.7 Any addition, including a roof structure or penthouse, shall not interfere with the operation of an existing or permitted solar energy system on an adjacent property, as evidenced through a shadow, shade, or other reputable study acceptable to the Zoning Administrator.

336.8 A roof top architectural element original to the house such as a turret, tower, or dormers shall not be removed or significantly altered, including changing its shape or increasing its height, elevation, or size.

336.9 Any addition shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:

- (a) The light and air available to neighboring properties shall not be unduly affected;
- (b) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised; and
- (c) The conversion and any associated additions, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale and pattern of houses along the subject street or alley.

336.10 In demonstrating compliance with § 336.9 the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the conversion and any associated addition to adjacent buildings and views from public ways.

Unlike an area variance, relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the requested relief are met. In reviewing an application for special exception relief, “[t]he Board’s discretion . . . is limited to a determination of whether the exception sought meets the requirements of the regulation.” *First Baptist Church of Washington v. District of Columbia Bd. of Zoning Adjustment*, 423 A.2d 695, 706 (D.C. 1981 (*quoting Stewart v. District of Columbia Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973))). If the applicant meets its burden, the Board must ordinarily grant the application. *Id.* As described in the Initial Submission, supplemented in this Prehearing Statement, and as will be further explained at the public hearing, all the conditions for a conversion of a residential building to an apartment house are satisfied.

A. The Proposed Conversions Complies with Section 336

The Applicant proposes to convert an existing vacant residential building into a 3-unit apartment house. The lot is exceptionally deep, has 3,000 square feet of land area, and easily complies with the 900 square foot requirement for the proposed three units. As shown on the architectural plans, *see Exhibit D*, the Applicant proposes to add a third floor. The addition of the third floor will increase the height to 33 feet -9 inches, which is below the 35 feet maximum height limit.

The existing structure only has one adjacent neighbor, 2710 Sherman Avenue. As shown on the aerial images included in the Initial Application, *see BZA Exhibit 10A*, the adjacent property does not have a chimney, or a solar energy system. Moreover, due to the exceptional depth of the lot, the existing foot path behind the properties that front on Fairmont Street, and the relatively modest addition, the proposed addition will not have a substantially adverse impact on the use or enjoyment of neighboring properties, nor impact the light and air available to those properties.

B. Harmony with the General Purpose and Intent of the Zoning Regulations and Maps

The proposed conversion is in harmony with the general purpose and intent of the Zoning Regulations and Maps. The Property satisfies all the requirements of the new regulations set forth pursuant to Zoning Commission order 14-11. It is located on a deep lot with a substantial amount of land area. Furthermore, by adding the front porch area, constructing the frontage of the addition in brick and adding windows to the front façade of the addition, the proposed use of the Property will not impact the character or feel of the neighborhood.

C. No Adverse Effect on the Use of Neighboring Property

The proposed project will result in the improvement of a vacant property. Additionally, as shown above, due to the large lot size and the configuration of surrounding lots, notably the foot path behind the properties that front on Fairmont Street NW, the proposed project will have no adverse affect on the use of neighboring property.

V. APPLICANT HAS ANC SUPPORT

The Applicant presented the project to the Zoning, Preservation and Development Committee of ANC 1B on September 21, 2015 and received their unanimous support for the design and use.² In response to the comments from the Zoning, Preservation and Development Committee, the Applicant has agreed to make changes to the architectural plans including constructing the frontage of the addition in brick and adding windows to the front façade of the addition. Furthermore, as stated above, the existing structure is a semi-detached dwelling, and the adjacent property, 2710 Sherman Avenue NW, has a porch. The porch on the Property was lost, presumably to fire or lack of maintenance many years ago. At the request of the ANC, the Applicant has agreed to restore the porch so that it is similar in size and scale to one on the adjacent property. The Applicant presented to ANC 1B on October 1, 2015 and received a resolution in support of the proposed conversion, *see* **BZA Exhibit 24**.

IV. WITNESSES

The following witness will appear on behalf of the Applicant:

1. Yared Assefaw, on behalf of the Applicant

The Applicant reserves the right to call additional witnesses.

V. CONCLUSION

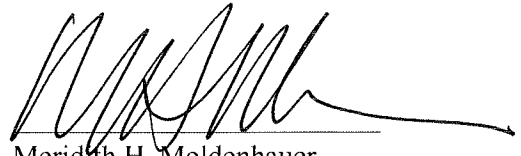
For the reasons stated above, and for the reasons enumerated in the Applicant's prior filings in this case, we hereby submit that the application meets the requirements for variance and special exception relief.

We look forward to presenting our case to the Board on October 27, 2015.

² As stated above, the need for variance relief for the court was recently added to the application, accordingly, it was not presented to the ANC.

Respectfully submitted,

GRIFFIN, MURPHY,
MOLDENHAUER & WIGGINS,
LLP

A handwritten signature in black ink, appearing to read 'M. Moldenhauer', with a long horizontal flourish extending to the right.

Meridith H. Moldenhauer

Ajoke Agboola

1912 Sunderland Place, N.W.

Washington, D.C. 20036

(202) 429-9000

Exhibit A

Buildings on Sherman Avenue NW Between 2708 and 2708

This project has been funded in part by a U.S. Department of the Interior, National Park Service Historic Preservation Fund grant administered by the District of Columbia's Historic Preservation Office.

<i>Square-Lot</i>	<i>Address</i>	<i>Material</i>	<i>Purpose</i>	<i>Permit</i>	<i>Date</i>	<i>Cost</i>
2858 0053	2708 Sherman Avenue NW	18 x 30 brick	dwelling	71117	4/10/1922	\$6,000
<i>Owner</i> Kite, Harry A.		<i>Architect</i> Sonnemann, A. H.		<i>Builder</i> Kite, Harry A.		
<i>Updated?</i> Yes		<i>Extant?</i> Yes				

Exhibit B

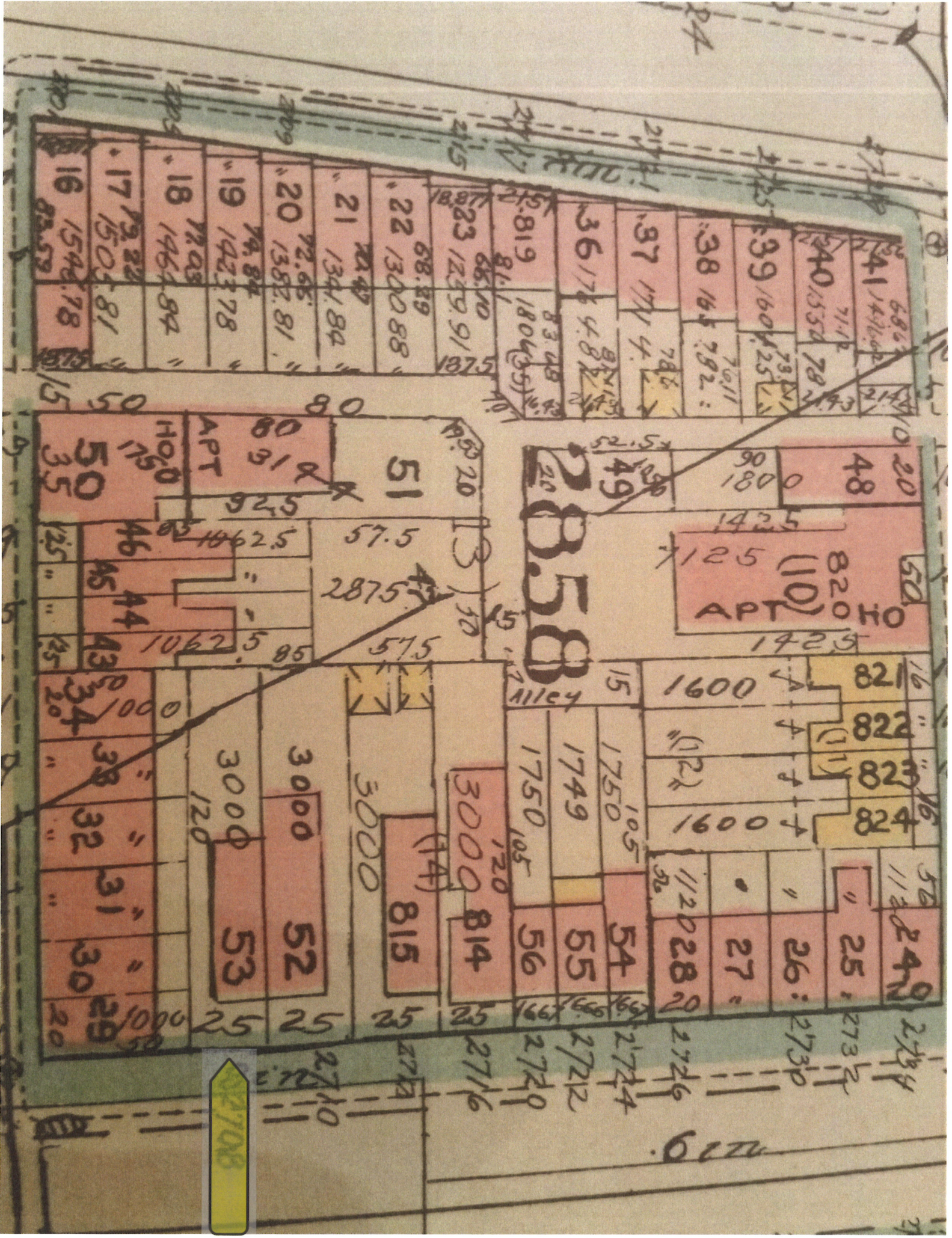
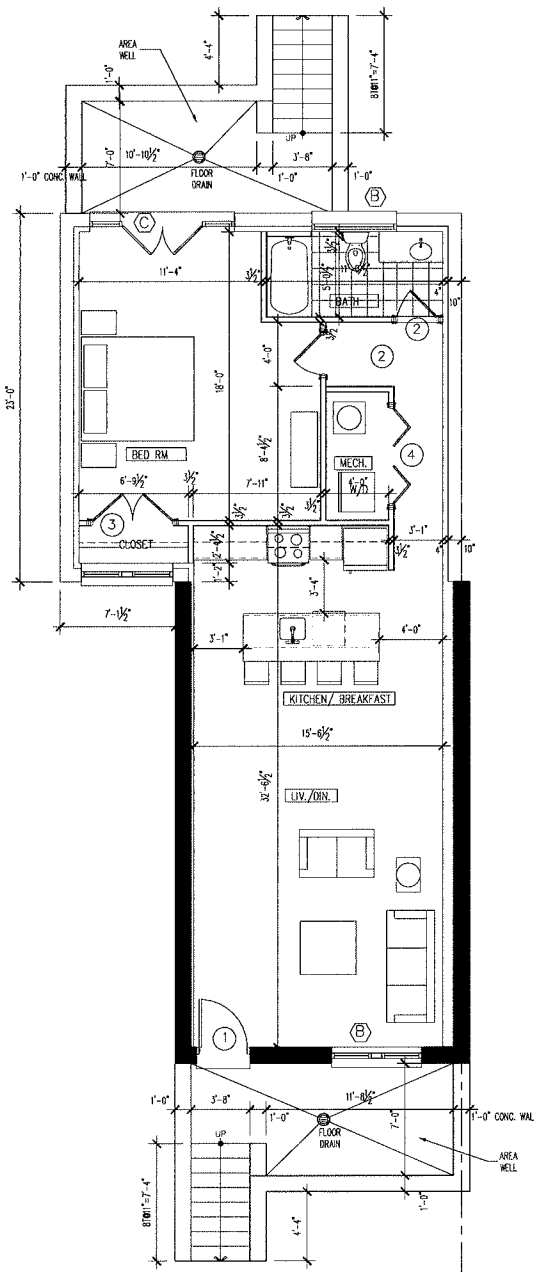


Exhibit C

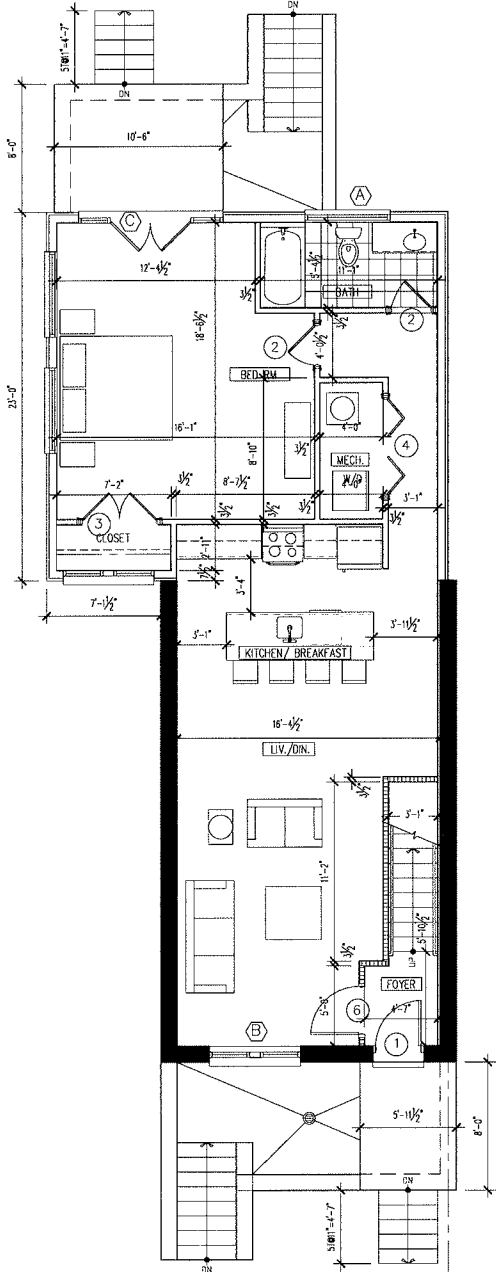




Exhibit D



① BSMT. FLOOR PROPOSED PLAN
SCALE: 3/16"=1'-0"



② FIRST FLOOR PROPOSED PLAN
SCALE: 3/16"=1'-0"

GENERAL NOTES:

ALL DIMENSIONS ARE TO STUD WALLS, UNLESS INDICATED OTHERWISE.
ALL NEW INTERIOR PARTITIONS ARE J.O.N.

NEW WORK LEGEND

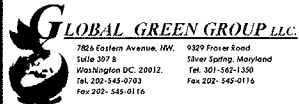
- DASHED LINE OF CEILING ELEMENTS ABOVE. REFER TO REFLECTED CEILING PLAN.
- EXISTING WALLS AND PARTITIONS TO REMAIN.
- NEW WALLS
- PARTITION TYPE SYMBOL.
- FLOOR PLAN KEY NOTE.

CONSTRUCTION KEY NOTES

SOLID WOOD POST IN WALL. SEE FRAMING PLAN

WALL LEGEND

TYP. INTERIOR FULL HEIGHT PARTITION; 2x4 STUDS 16" O.C. W/ 1/2" GYP. BD. EACH FINISHED SIDE. (USE GREENBOARD AND/OR DUROCK @ BATHROOM)



2708 SHERMAN AVE. N.W.
WASHINGTON D.C.
20010

SCALE: as noted
DRAWN BY: CHECKED BY:
BCT JOB NO.: 011-0003
ISSUED: DATE:

REVISIONS:

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PROPOSED
FLOOR PLANS

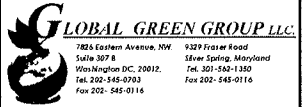
A 101

WINDOW & SLIDING GLASS DOOR SCHEDULE			
NO	SIZE	MATERIAL	REMARKS
(A)	5'-4"X 5'-4"	VINYL/ GLASS	SINGLE HUNG WINDOW
(B)	5'-8"X5'-4"	VINYL/ GLASS	SINGLE HUNG WINDOW (PAIR)
(C)	9'-0"X6'-8"	VINYL/ GLASS	PAIR OF 2'-6" WIDE DOUBLE GLASS DOOR
(D)	3'-2"X5'-4"	VINYL/ GLASS	SINGLE HUNG WINDOW
(E)	9'-0"X5'-4"	VINYL/ GLASS	2'-6" WIDE DOUBLE CASEMENT WINDOW SEE ELEVATION ON A-1.3

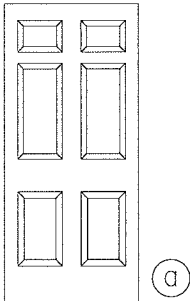
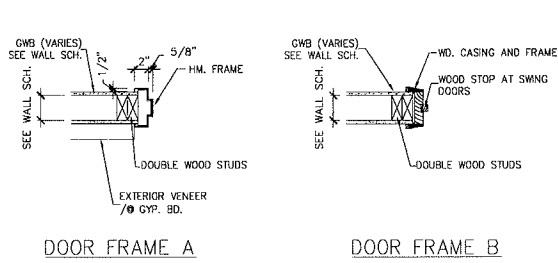
DOOR SCHEDULE					
NO	SIZE	MATERIAL	ELEV	FRAME TYPE	REMARKS
1	3'-0"X6'-8"X1 3/4"	INSULATED METAL	a	A	EXTERIOR: 1 HOUR LABEL DOOR & FRAME
2	2'-6"X6'-8"X1 3/8"	HARD BOARD	a	B	
3	PR 2'-6"X6'-8"X1 3/8"	HARD BOARD	a	B	
4	PR 3'-0"X6'-8"X1 3/8"	HARD BOARD	a	B	BIFOLD
5	PR 2'-6"X6'-8"X1 3/8"	HARD BOARD	a	B	BIFOLD
6	3'-0"X6'-8"X1 3/4"	INSULATED METAL	a	A	2 HOUR LABEL DOOR & FRAME
7	2'-0"X6'-8"X1 3/8"	HARD BOARD	a	B	

- GENERAL NOTES:
- ALL DIMENSIONS ARE TO STUD WALLS, UNLESS INDICATED OTHERWISE.
- ALL NEW INTERIOR PARTITIONS ARE  U.O.N.
- NEW WORK LEGEND
-  DASHED LINE OF CEILING ELEMENTS ABOVE. REFER TO REFLECTED CEILING PLAN.
-  EXISTING WALLS AND PARTITIONS TO REMAIN.
-  NEW WALLS
-  PARTITION TYPE SYMBOL.
-  FLOOR PLAN KEY NOTE.

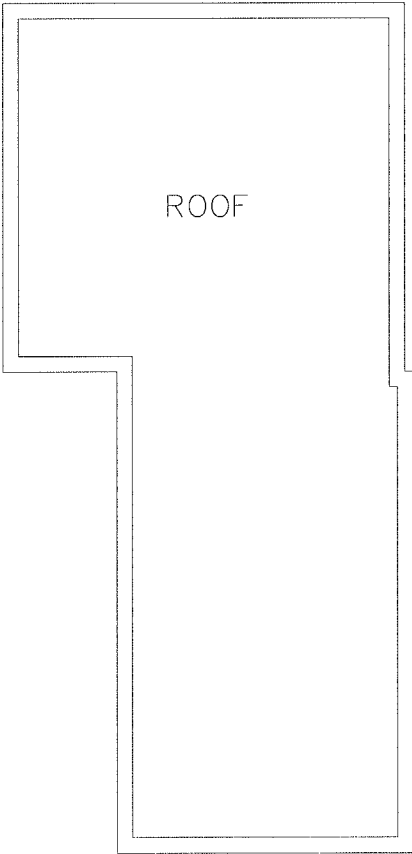
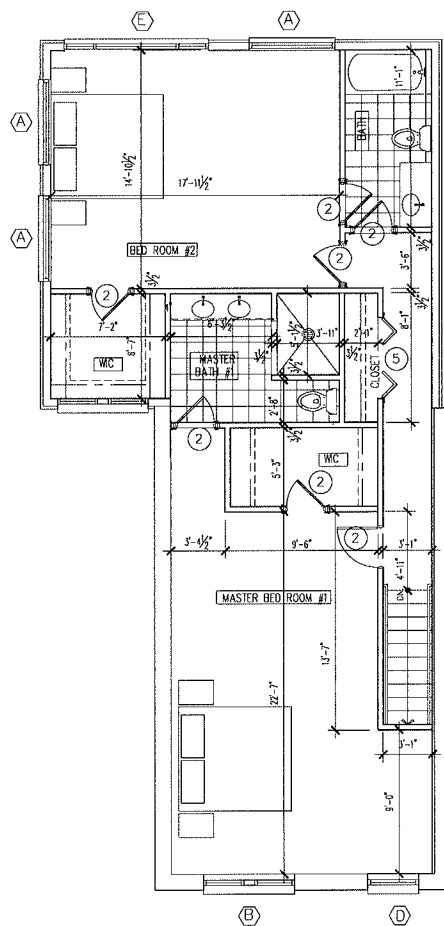
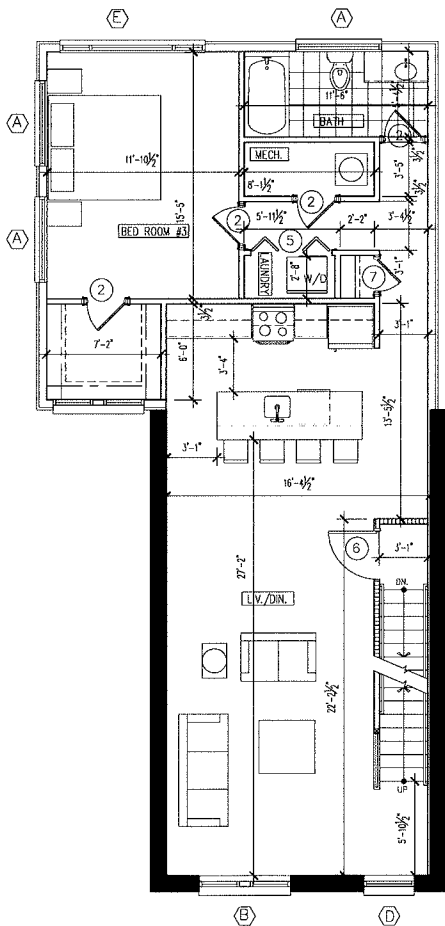
- CONSTRUCTION KEY NOTES
-  SOLID WOOD POST IN WALL. SEE FRAMING PLAN



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20010



NOTE: HOLD UP ALL BEDROOM DOORS TO ALLOW FOR RETURN AIR



- WALL LEGEND
-  TYP. INTERIOR FULL HEIGHT PARTITION; 2x4 STUDS 16" O.C. W/ 1/2" GYP. BD. EACH FINISHED SIDE. (USE GREENBOARD AND/OR DU-ROCK @ BATH-ROOM)

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PROPOSED
FLOOR PLANS

A 102

① 2ND FLOOR PROPOSED PLAN
SCALE: 3/16"=1'-0"

② THIRD FLOOR PROPOSED PLAN
SCALE: 3/16"=1'-0"

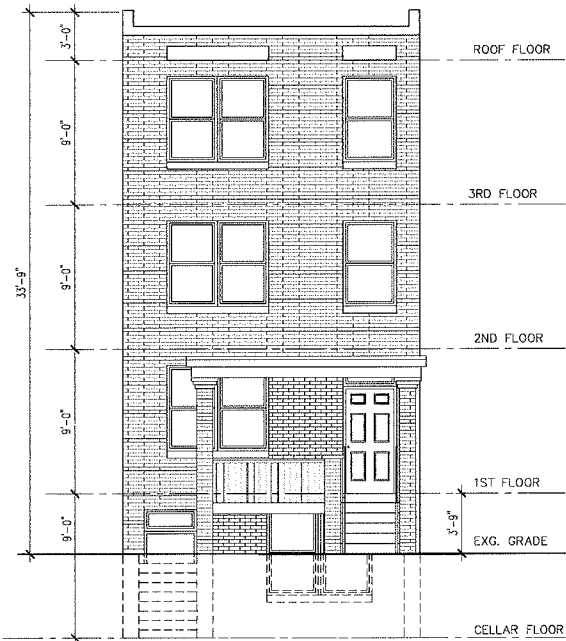
③ ROOF PROPOSED PLAN
SCALE: 3/16"=1'-0"



PROPOSED LEFT SIDE ELEVATION

SCALE: 1/4"=1'-0"

3
A-103



PROPOSED FRONT ELEVATION

SCALE: 1/4"=1'-0"

1
A-103



PROPOSED REAR ELEVATION

SCALE: 1/4"=1'-0"

2
A-103

GENERAL NOTES:

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NEW WORK LEGEND

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- EXISTING WALLS AND PARTITIONS TO REMAIN.
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- PARTITION TYPE SYMBOL.
- FLOOR PLAN KEY NOT.

CONSTRUCTION KEY NOTES

- SOLID WOOD POST IN WALL SEE FRAMING PLAN

WALL LEGEND

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PROPOSED
ELEVATIONS

A 103